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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re L. M., et al., Persons Coming
Under the Juvenile Court Law.

B292500

(Los Angeles County
Super. Ct. No. 18CCJP01452)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

LILIANA G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
Steff R. Padilla, Juvenile Court Referee. Affirmed.

Suzanne Davidson, under appointment by the Court of Appeal, for
Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant
County Counsel, Kimberly Roura, Deputy County Counsel, for Plaintiff and
Respondent.

INTRODUCTION

Mother Liliana G. appeals from a finding of dependency jurisdiction pursuant to Welfare and Institutions Code section 300, subdivision (b), over her minor children.¹ Mother contends her history of marijuana use does not constitute a current risk of harm to the children, and therefore the court erred in sustaining the jurisdictional allegations against her. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The family consists of mother Liliana G. (Mother), father Michael M. (Father), daughter L.M. (born July, 2016) and son M.M. (born January, 2018).² They resided together in the city of Whittier. Mother had no prior criminal or child welfare history.

A. Initial Investigation and Nondetained Petition

The family came to the attention of DCFS in January 2018 through the child protection hotline, when Mother tested positive for marijuana at M.M.'s birth. Mother reported she had smoked marijuana daily for six years, but stopped smoking when she learned she was two months pregnant with M.M. Mother explained that any positive test result was attributable to second-hand smoke from others. M.M. did not have any medical issues or withdrawal symptoms at birth.

During a subsequent interview with a social worker, Mother stated she smoked marijuana when stressed, estimating she smoked approximately two bowls per week. She admitted having smoked marijuana approximately 10 times when pregnant with M.M. However, she claimed she and Father never smoked marijuana at the same time, to ensure one parent was always sober with the children. Father reported he smoked marijuana approximately three times per week for medical reasons.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

² Father is not involved in the current appeal.

Due to her admitted marijuana use, Mother was required to attend regular prenatal appointments during her pregnancy, but she failed to appear for nine appointments and attended only one appointment at 16 weeks. Mother also missed two newborn appointments for M.M. following his birth. Mother stated she would have a very difficult time not smoking marijuana.

At the March 2018 detention hearing, the juvenile court found both children persons described under section 300 and ordered they be released to the parents' home under DCFS supervision. The parents were ordered not to use marijuana.

B. Juvenile Dependency Petition

On March 5, 2018, DCFS filed a petition naming the children under section 300, subdivision (b). In count b-1, the petition alleged: "[Mother] has a history of marijuana abuse and is a current abuser of marijuana, which render [Mother] unable to provide regular care and supervision of the children. On 01/06/2018, [Mother] had a positive toxicology screen for marijuana. [Mother] used marijuana during [Mother's] pregnancy with the child [M.M.]. On prior occasions, [Mother] was under the influence of marijuana while the child [L.M.] was in [Mother's] care and supervision. The children are of such young age requiring constant care and supervision and [Mother's] marijuana abuse interferes with [Mother's] ability to provide regular care and appropriate supervision of the children. [Father] knew of [Mother's] marijuana abuse and failed to protect the child [L.M.] by allowing [Mother] to reside in the child's home and to have unlimited access to the child. [Mother's] marijuana abuse and [Father's] failure to protect the child [L.M.] endangers the children's physical health and safety and places the children at risk of serious physical harm, damage, danger and failure to protect."

C. Jurisdiction/Disposition Report

DCFS prepared a jurisdiction/disposition report in May 2018. Both children were observed to be well-groomed, healthy, with no visible marks or bruises, and developmentally on-track.

Mother elaborated on her marijuana use. Since she was 17 years old, Mother had smoked marijuana two to three times per week. She denied marijuana use during her pregnancy with L.M. During her pregnancy with M.M., she used marijuana about 10 times to relieve nausea. She disclosed her marijuana use to her obstetrician, who did not seem concerned. Mother did not believe she was harming M.M. by using marijuana during her pregnancy. She continued to use marijuana after M.M.'s birth, around 0.3 grams two to three times per week. When under the influence, she felt happy and relaxed.

Mother stated she smoked marijuana only outside the home, then stayed in her bedroom for two or three hours either sleeping or watching television until she was not high anymore. She claimed she and Father took turns getting high, with each one caring for the children while the other was high. However, Mother did not think being under the influence impaired her ability to care for the children. She denied any marijuana was kept in the home.

Father was aware of Mother's drug use and had discouraged her from smoking marijuana while pregnant, which Mother disregarded. Father believed Mother had used marijuana only two or three times while pregnant, and was not aware she had used marijuana at least 10 times. He did not know who had cared for L.M. during those times. Father admitted he felt "way different" when under the influence of marijuana, but did not think it impaired his parenting ability.

Mother claimed she had stopped using marijuana since the March 2018 detention hearing, but her weekly drug tests continued to show positive results. After a sudden increase in April 2018, Mother's levels dropped on three consecutive tests in May. Father continued testing positive at fluctuating levels. Both parents attributed the increasing levels of marijuana detected in the drug tests to their recent exercise. However, as a toxicology technician explained, marijuana levels should decrease to zero within a few weeks of stopping usage.

The report noted: "Since the [detention] hearing, the mother and the father have continued to test positive for marijuana and are unable to provide reasonable explanations of their positive drug tests which lead the

Department to believe that they have continued to use marijuana while the children [L.M and M.M.] are under their care and supervision.” Both parents complied with the DCFS case plan and court orders by enrolling in a substance abuse program and parenting classes, and submitted to weekly drug testing and monthly meetings with the DCFS social worker.

D. Ex Parte Removal and Detention Hearing

In June 2018, a DCFS investigator visited the children’s home and noted a strong odor of marijuana in the house. A few days later, DCFS social workers made an unannounced visit to the house. They observed that the home was messy, with trash lying around, piles of clothes, and dirty floors. When Father was confronted about his rising drug test levels, he and Mother denied that he had been using marijuana. However, during a walk-through of the home, the social workers observed a gold canister and a pack of rolling papers on top of the mattress box spring. Father admitted the canister contained marijuana and explained it had fallen out of his pocket. Mother expressed surprise and began to cry. Father acknowledged the canister was within reach of the children, but asserted they would not know how to open it. He admitted he had recently used marijuana for a seizure condition.

Mother’s marijuana levels continued to fluctuate. Although the test results showed an increase in June 2018, she remained adamant that she had not used marijuana since the March 2018 detention hearing, and could not explain the positive test results. A safety plan was developed relocating Mother and the children to the maternal grandparents’ home so they could monitor the children’s safety.

In a section 385 ex parte application, DCFS requested the children be removed from the parents’ custody to ensure their safety, noting: “It is DCFS’ assessment that parents continue to lack knowledge and understanding of how marijuana use negatively affects their young children’s safety and well-being. Further, it is DCFS’ assessment that parents have not taken this case seriously as parents have continued to defy the Court’s orders that they are not to use marijuana anymore.”

At the July 2018 detention hearing, the court authorized removal of the children from the parents' custody. The children were placed with the maternal grandparents, and Mother was allowed to reside with them.

E. Addendum and Last Minute Reports

As of August 2018, Mother was enrolled in substance abuse counseling, parenting classes and individual counseling through a local program. She was described as "eager and motivated to maintain sobriety and comply with court and program requirements."

Mother continued to submit to weekly drug testing, and the results showed a significant drop in marijuana levels during July 2018. Mother tested negative for the first time on July 23, 2018. Mother tested negative three more times in August 2018. In total, from March to August 2018, Mother took approximately 25 drug tests, four of which were negative in the last month of testing.

Mother was compliant with court orders and was focused on her own recovery to regain custody of the children. She had contact with Father only during his monitored visits.

Father continued testing positive for marijuana or failed to appear for weekly drug tests.

F. Adjudication and Disposition Hearing

At the August 30, 2018 adjudication hearing, the dependency court sustained the petition as to count b-1,³ finding a causal nexus between Mother's marijuana use and a substantial risk of harm to the children in utero. The court observed: "I can't think of a stronger nexus than in utero use of a drug while you're pregnant, not once but twice." The court further noted, "As to Mother, she continues to use. It's not medically necessary. It's what she wants to do. She's going to use it throughout, and there's a substantial risk of detriment."

³ The court dismissed the b-2 count alleging Father abused marijuana, noting that Father's use appeared to be medically necessary to treat his seizure disorder.

The children were declared dependents of the court under section 300 and released to the parents under DCFS supervision. Mother was ordered to reside with the maternal grandmother, while Father was ordered to reside with the paternal grandmother. The parents were ordered to complete a drug rehabilitation program and submit to random drug testing.

Mother appeals the jurisdictional findings and related dispositional orders.

DISCUSSION

A. Governing Principles

We review the juvenile court's jurisdictional findings and order for substantial evidence. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966; *In re R.C.* (2012) 210 Cal.App.4th 930, 940.) Under this standard, "[w]e review the record to determine whether there is any substantial evidence to support the juvenile court's conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court's orders, if possible." (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)

Section 300, subdivision (b) permits the assertion of jurisdiction where "the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child . . . or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . substance abuse." Where the child has not suffered actual harm, the evidence must establish "that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm. . . ." [Citation.]" (*In re A.G.* (2013) 220 Cal.App.4th 675, 683.)

"Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing [citations], the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child [citation]. The court may consider past events in deciding whether a child currently needs the court's protection. [Citation.] A parent's "[p]ast conduct may be probative of

current conditions” if there is reason to believe that the conduct will continue.’ [Citations.]” (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383-1384; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1215.)

“In addition, the Legislature has declared, ‘The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment.’ (§ 300.2.) Exercise of dependency court jurisdiction under section 300, subdivision (b), is proper when a child is ‘of such tender years that the absence of adequate supervision and care poses an inherent risk to [his or her] health and safety.’ [Citation.]” (*In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1384; *In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216.)

B. Substantial Evidence Supports The Jurisdictional Findings.

There are three elements for jurisdiction under section 300, subdivision (b): “(1) one or more of the statutorily-specified omissions in providing care for the child ([such as] inability . . . to provide regular care for the child due to . . . substance abuse); (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Joaquin C.* (2017) 15 Cal.App.5th 537, 561.) Mother disputes that she was a substance abuser, and that her substance abuse caused any harm or posed a substantial risk of causing any harm to the children.

Substantial evidence supports the court’s finding that Mother’s substance abuse posed a substantial risk of harm to the children. Mother’s use of marijuana was not casual, and she demonstrated a marijuana dependency that spanned six to eight years. She admitted chronic and continuous marijuana use two or three times per week from the age of 17. She even used marijuana at least 10 times while pregnant with M.M., against Father’s wishes, and resumed usage after M.M. was born. Mother smoked marijuana when she was stressed, and it helped her feel happy and relaxed. Even after DCFS initiated an investigation, Mother stated she would have a difficult time stopping usage. Although Mother was aware that her continued use could subject the family to supervision by DCFS and the

court, she continued testing positive for four months after the initial DCFS investigation and the court's explicit order to stop using marijuana. The record also suggests Mother was not completely forthright in disclosing her marijuana use. She initially stated she had used marijuana daily for years, then reduced her reported usage to two to three times per week. She claimed she had not smoked marijuana since the March 2018 detention hearing, but continued testing positive until July 2018. Although she denied storing any marijuana inside the home, and claimed to smoke marijuana only outside, a DCFS inspection exposed a canister of marijuana and a strong marijuana odor inside the home. Mother's admitted marijuana use before, during, and after M.M.'s birth, her inability to stop using marijuana even under court order, and her efforts to conceal her usage strongly suggest a marijuana dependency.

We disagree with Mother's contention that DCFS failed to establish a nexus between her marijuana use and any harm, or substantial risk of harm, to the children. First, there was the admitted use of marijuana while pregnant. (See *In re Troy* (1989) 215 Cal.App.3d 889, 899, 900 [prenatal drug use a factor in determining dependency jurisdiction because "prenatal use of dangerous drugs by a mother is probative of future child neglect"].) Moreover, Mother's substance abuse appeared to impact her ability to provide prenatal and postnatal care for M.M. She attended only one prenatal appointment during her pregnancy, despite the need for more frequent monitoring due to her drug use. She missed two critical newborn appointments for M.M. following his birth. Mother's failure to provide regular medical care for the children posed a direct threat to their safety and wellbeing, and was not merely a "speculative" risk. The causal nexus between Mother's substance abuse and the risk of harm to the children was further established by the children's "tender" age at the time of the adjudication hearing – L.M. was two years old, and M.M. was only seven months old. (See *In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216 [substance abuse by parent of children under six years old is *prima facie* evidence of parent's inability to provide regular care, and dependency jurisdiction is proper when child is of such "tender years" that the absence of adequate care poses an inherent risk to his or her safety].)

Although Mother described how she and Father took turns getting high so one parent would always be sober with the children, this arrangement underscores Mother's inability to care for the children due to her substance abuse. Section 300, subdivision (b) evaluates a parent's individual fitness to provide "regular" care for the child, not care on an alternating basis. Although both parents denied that their marijuana use compromised their parenting abilities, neither could explain why they voluntarily separated themselves from the children for hours when under the influence. Furthermore, Father was not aware that Mother had used marijuana at least 10 times during her pregnancy with M.M., suggesting Mother had supervised L.M. while under the influence. As DCFS noted in its reports, both Mother and Father seemed to disregard the potential dangers of marijuana as they continued smoking it in defiance of the court's order. DCFS's concern for the children's safety was legitimized during its home inspection by the discovery of a marijuana canister within the children's reach, and the strong smell of marijuana inside the filthy home. In light of Mother's in utero use of marijuana, her failure to seek medical care for the children, and her apparent disregard for the children's safety despite an implicit understanding of marijuana's dangers, the juvenile court was justified in drawing the reasonable inference that the children were at risk of harm and neglect due to Mother's substance abuse.

Although Mother is correct that jurisdiction must be asserted on the basis of conditions which exist at the time of the jurisdictional hearing, "the court is not required to disregard the mother's prior conduct. [Citation.] '[P]ast events can aid in a determination of present unfitness.' [Citation.]" (*In re Troy D.*, *supra*, 215 Cal.App.3d at p. 900; accord, *In re J.N.* (2010) 181 Cal.App.4th 1010, 1025-1026 ["parent's current understanding of and attitude toward the past conduct that endangered a child" is relevant in court's assessment of risk]; *In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1384 ["'[p]ast conduct may be probative of current conditions' if there is reason to believe that the conduct will continue." [Citations.]"). Here, the court was not required to wait until the children suffered actual harm to assume jurisdiction, and could take steps to protect them based on its determination that Mother's past conduct placed them in current and

substantial risk of physical harm. (§ 300, subd. (b); *In re N.M.* (2011) 197 Cal.App.4th 159, 165; *In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1215.) The court was entitled to conclude that Mother's recent and relatively brief sobriety had not sufficiently dissipated the risk of harm posed by her long history of substance abuse and her continued reliance on marijuana until a month before the adjudication hearing. (Cf. *In re David M.*, *supra*, 134 Cal.App.4th at p. 830 [mother tested negative for drugs 18 times over four and a half months before jurisdiction hearing]; *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1004 [at the time of jurisdiction hearing, mother had tested clean for three months].) There was substantial evidence from which the court could conclude that Mother's marijuana dependency was not a past problem but an ongoing risk of harm requiring the court's continued exercise of jurisdiction.

Mother cites several cases for the proposition that a parent's use of marijuana alone, without evidence of risk of harm, does not justify the juvenile court's exercise of jurisdiction over his or her child. (See, e.g., *In re Destiny S.*, *supra*, 210 Cal.App.4th at p. 1003; *In re Rebecca C.* (2014) 228 Cal.App.4th 720, 727-728.) These cases are distinguishable. *In re Rebecca C.* involved a teenager daughter who was not subject to the "tender years" presumption. (*In re Rebecca C.*, *supra*, at p. 722.) A DCFS inspection revealed that the home was clean, "clear of drugs" and "free of hazards." (*Id.* at p. 727.) The child was up-to-date with medical checkups, and mother was significantly involved in the child's education. (*Ibid.*) The only evidence of a risk of harm was "homework issues [which] do not rise to a level of physical harm." (*Ibid.*) *In re Destiny S.* involved an 11-year-old child who "'was old enough to avoid the kinds of physical dangers which make infancy an inherently hazardous period of life.' [Citation.]" (*In re Destiny S.*, *supra*, at p. 1004.) The child was well-cared for, and the home was clean and neat, with no evidence of drug paraphernalia. (*Ibid.*) Mother had consistently tested negative for drugs for three months. (*Ibid.*) The only evidence presented of a risk of harm was the child's previous tardiness to school, which the court rejected as indicative of a substantial risk of serious physical harm. (*Id.* at pp. 1002-1003.) In contrast, L.M. and M.M. were children of "tender years" who could not avoid the physical dangers and drug paraphernalia DCFS

observed in their home as recently as two months before the adjudication hearing. Mother used marijuana during her pregnancy, and failed to provide critical medical care for M.M. before and after birth. Over a five-month period of drug testing, she had clean results only in the last month before the adjudication hearing. Even if Mother was not currently abusing marijuana at the time of the hearing, she could not successfully rebut the presumption that her past but recent behavior posed a substantial risk of harm to the children. Thus, the court's jurisdictional finding and dispositional order were supported by substantial evidence.

DISPOSITION

The juvenile court's jurisdictional finding and dispositional order are affirmed.

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MANELLA, P. J.

We concur:

COLLINS, J.

CURREY, J.